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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,147	10/27/2003	Nicholas Want	AMD-104US	3026
23122	7590	03/17/2006	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			CHAN, KO HUNG	
		ART UNIT	PAPER NUMBER	
		3632		

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/694,147	WANT ET AL.
	<b>Examiner</b> Korie H. Chan	<b>Art Unit</b> 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-6,8-10,12-19 and 21-32 is/are pending in the application.
  - 4a) Of the above claim(s) 24-31 is/are withdrawn from consideration.
- 5) Claim(s) 32 is/are allowed.
- 6) Claim(s) 1,3-6,8-10,12-15,18,19 and 21-23 is/are rejected.
- 7) Claim(s) 16 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

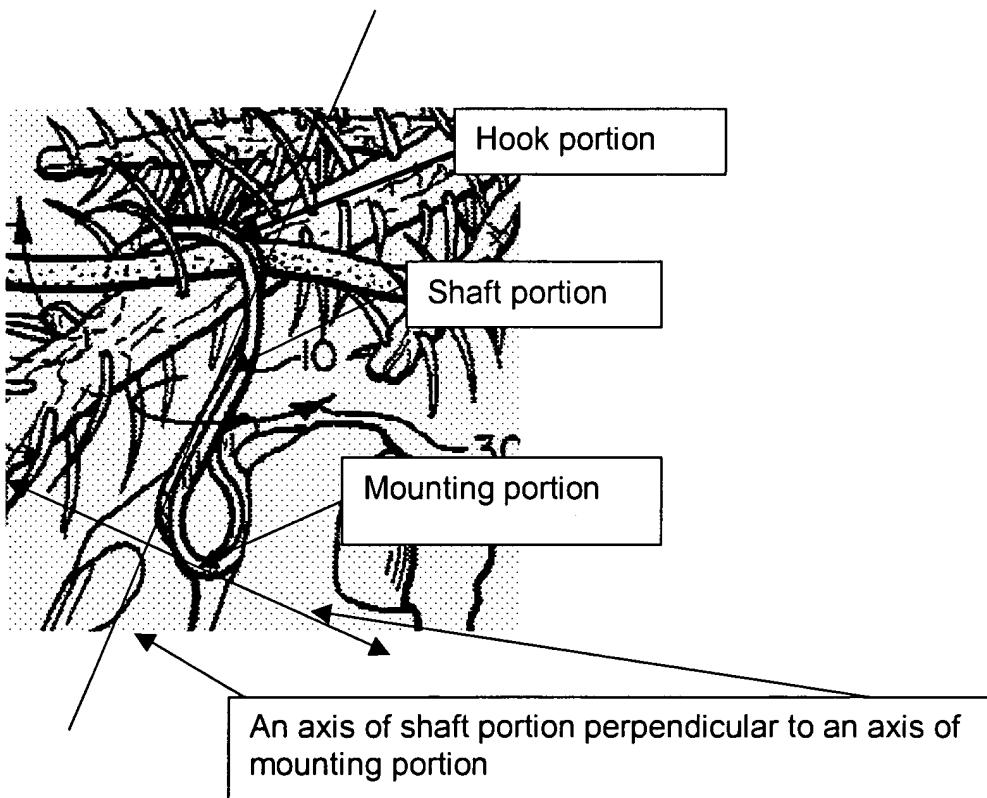
***Election/Restrictions***

Claims 24-31 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 5, 2006.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

Claims 1-3 and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Swenson et al (US patent no. 5,575,446). Swenson disclosed all the claimed features of applicant's invention as demonstrated below.

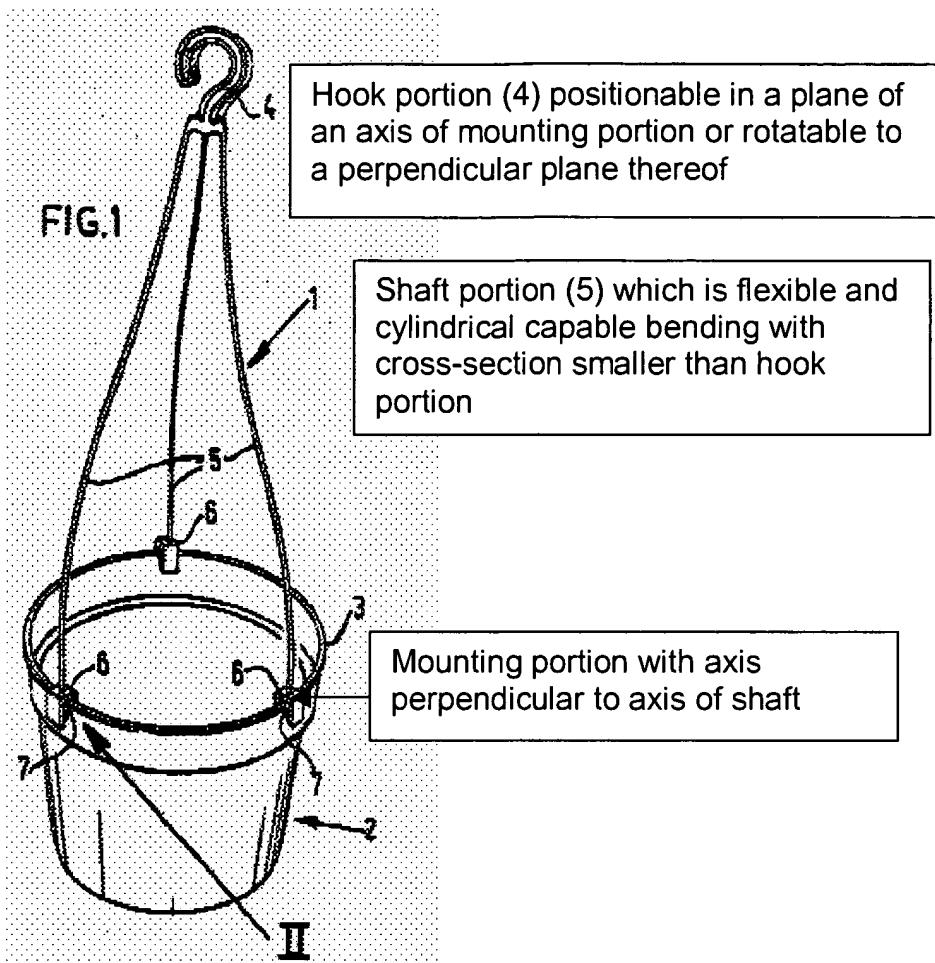


Regarding applicant's intended use language set forth in the preamble "for medical device" such as "a fluid recovery system" as in claim 9 or "thoracic cavity drainage system" is not accorded with patentable weight, since a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

In this case, Swenson's hanger is capable of performing the intended use of supporting a medical device of the thoracic cavity drainage system type.

*Applicant's argument filed 1/5/2006 have been fully considered but are found not persuasive. Regarding Swenson et al, applicant argues that Swenson does not disclose "hook portion is positionable in a plane of the mounting portion. Examiner respectfully disagrees. Swenson in figure 3 clearly shows the hook portion 15 positioned in a plane of the mounting portion (12). And the longitudinal axis of the mounting portion as illustrated above is perpendicular to an axis of the shaft. Accordingly, the rejection stands.*

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wijsman (US patent no. 4,440,371). Wijsman disclosed all the claimed features of applicant's invention as demonstrated below.



Again regarding applicant's intended use language set forth in the preamble "for medical device" such as "a fluid recovery system" as in claim 9 or "thoracic cavity drainage system" is not accorded with patentable weight. Wijsman's hanger is capable of performing the intended use function claimed.

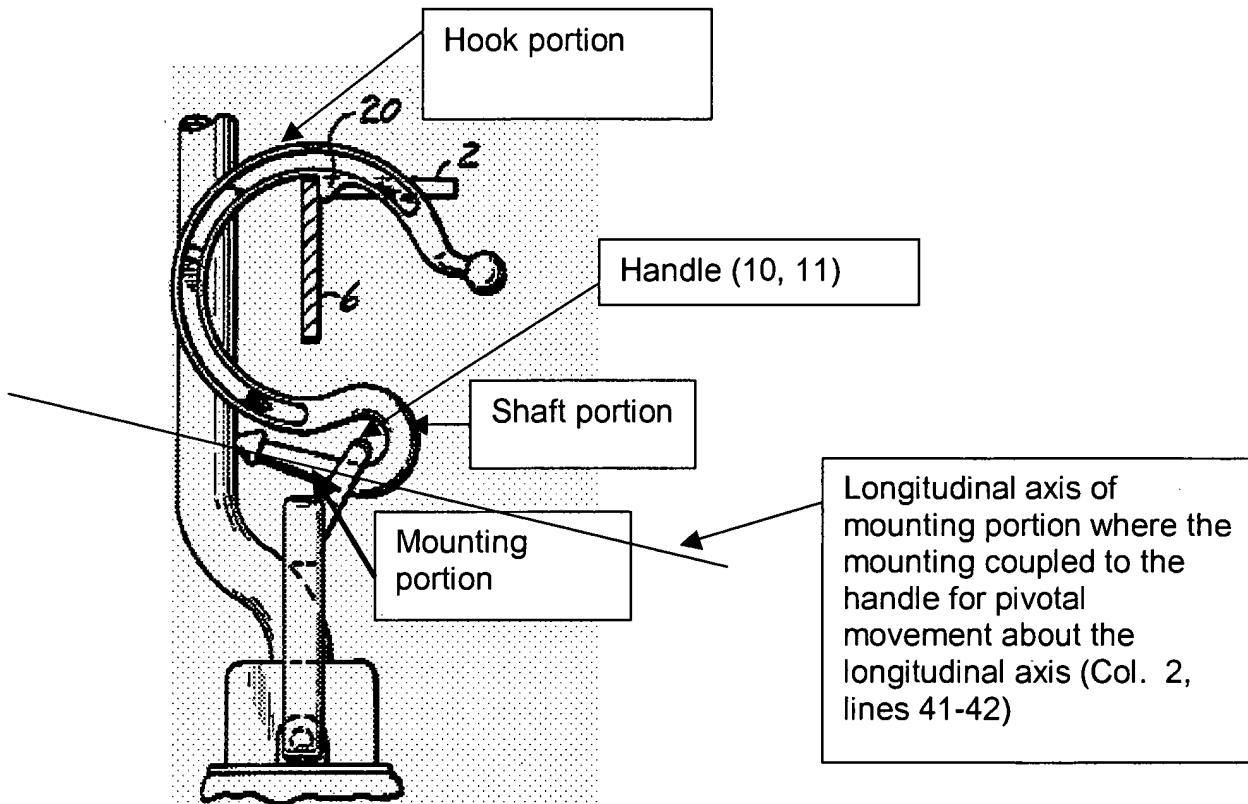
*Applicant's argument filed 1/5/2006 have been fully considered but are found not persuasive. Regarding Wijsman, applicant argues that Wijsman does not disclose "mounting portion...configured for mounting said apparatus for movement with respect to the medical device" where Wijsman does not show the carrying members (6) are adapted for movement with respect to the pot. Examiner respectfully disagrees.*

*Wijsman shows the mounting portion (item 6) is configured for mounting the apparatus (the hanger) by gripping the pot and when the pot is gripped, the apparatus for hanging can be moved via the flexible shaft (1) and the fact the pot is gripped by item 6 with respect to the device (or pot).*

*Applicant argues that Wijsman's carrying member (item 6) does not have longitudinal axis or axis of rotation. Examiner respectfully disagrees. The "longitudinal axis" is not claimed as "axis of rotation" in claims 1-12 and such argument is irrelevant. Regarding longitudinal axis, the carrying member 6 of Wijsman certainly has a longitudinal axis. An axis is an imaginary line through the device. Wijsman's longitudinal axis is any horizontal axis extending through the item 6 along the plane of the hook (4) which also meets applicant's limitation that "hook portion is positionable in a plane of the mounting portion. Accordingly, the rejection stands.*

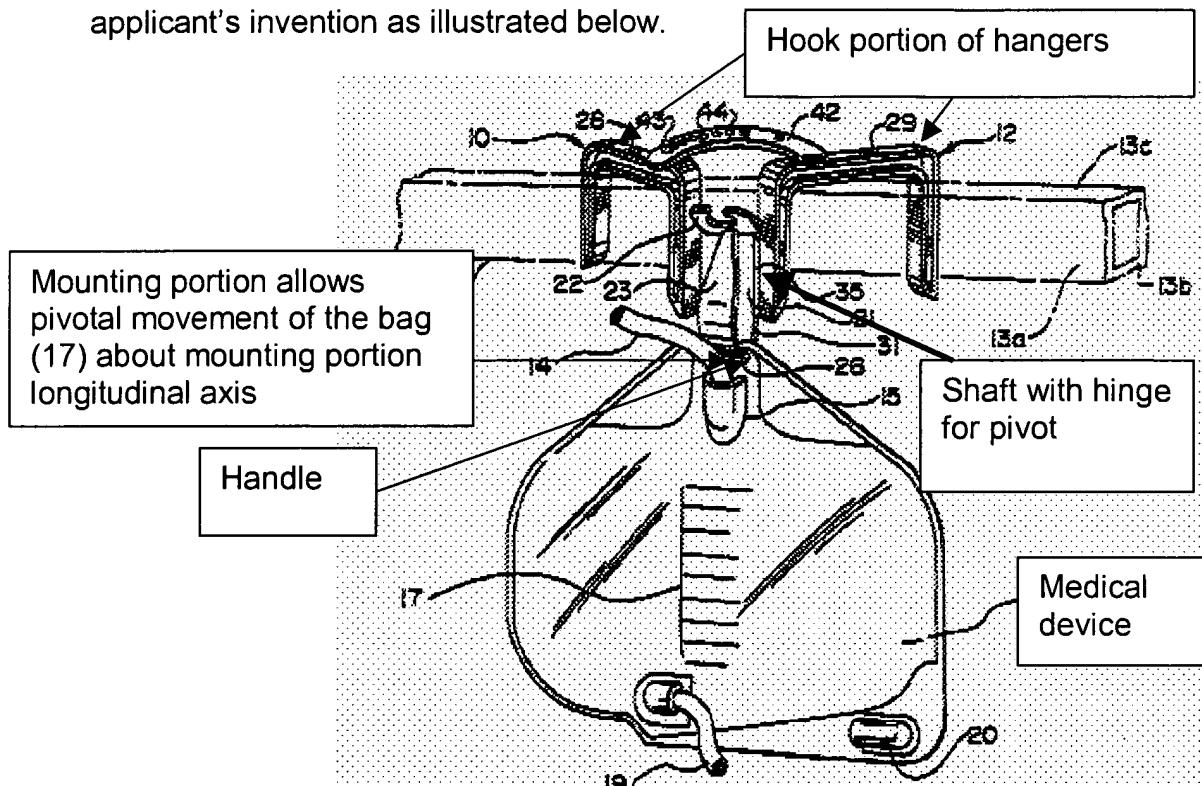
Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by O'Day (US patent no. 4,219,177). O'Day discloses an assembly configured to be hung from a support (2), the assembly comprising: a medical device (drainage container); a handle (11, figure 1) coupled to the medical device and configured for grasping the medical device, the handle defining at least one aperture (10); and at least one hanger comprising a shaft (intermediate curved portion), a mounting portion (17) coupled to an end portion of the shaft and coupled to the handle; and a hook portion (15) positioned at an opposite end portion of the shaft and configured for hanging from the support; wherein the hanger is pivotable with respect to the handle, thereby facilitating

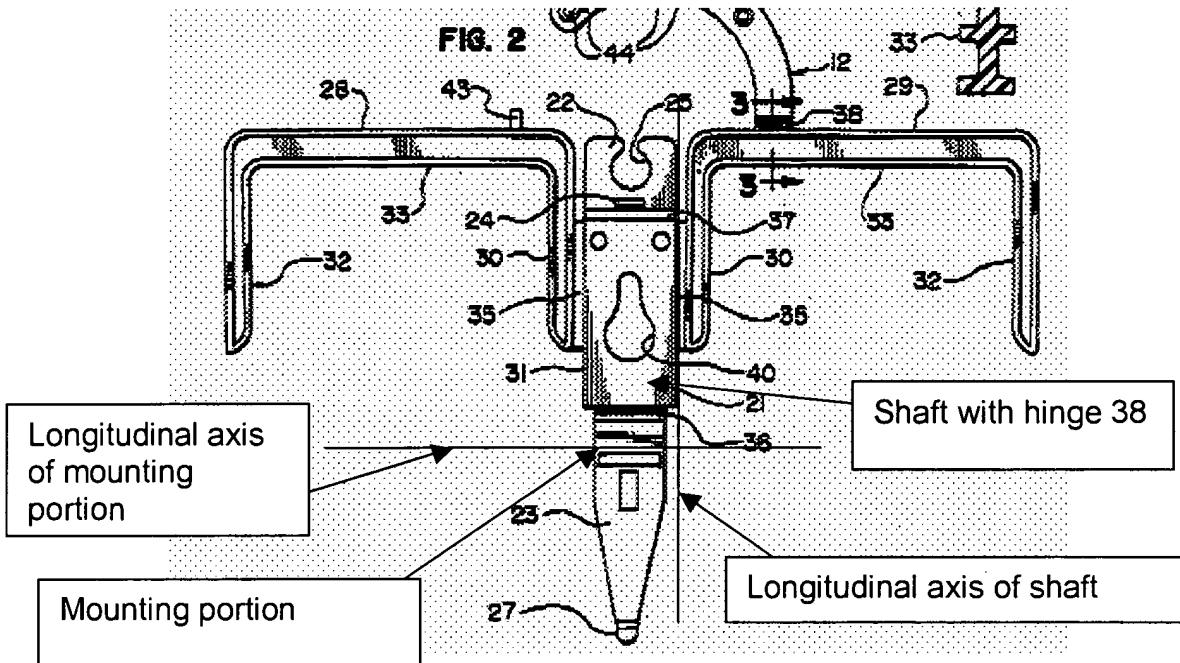
deployment and retraction of the hanger with respect to said handle; and wherein at least a portion of the hanger extends into the aperture in the handle.



*Applicant's argument filed 1/5/2006 have been fully considered but are found not persuasive. Regarding O'Day, applicant argues that O'Day does not disclose "mounting portion...having a longitudinal axis ...coupled to said handle for pivotal movement only about said longitudinal axis". Examiner respectfully disagrees. As illustrated above, O'Day demonstrates a longitudinal axis along the lower hook portion which is coupled to the eyelet 10 of the handle 11 for pivotal or swivel movement about the eyelet 10 to facilitate retraction or foldability for compactness (col. 2, lines 41-42). The amended claim 32 has overcome the rejection of O'Day and therefore withdrawn herein.*

Claims 13-15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhodes (US patent no. 5,373,799). Rhodes disclosed all the claimed features of applicant's invention as illustrated below.





*Applicant's argument filed 1/5/2006 have been fully considered but are found not persuasive. Regarding Rhodes, applicant argues that Rhodes does not disclose "mounting portion coupled to an end portion of said elongated shaft and coupled for pivotal movement with respect to the medical device about a longitudinal axis of the mounting portion" and "elongated shaft of said hanger configured to permit rotation of said hook portion with respect to said mounting portion of said hanger about a longitudinal axis of the elongated shaft". Examiner again respectfully disagrees.*

*Rhodes clearly discloses "mounting portion (the portion of the strap where the handle of medical bag is hung) coupled to an end portion of said elongated shaft (21 along with its hinge 38) and coupled for pivotal movement with respect to the medical device about a longitudinal axis of the mounting portion (the handle of the medical bag and the strap mounting portion are foldable or pivotable about each other at the longitudinal axis, see illustration above)" and "elongated shaft (21 along with its hinge 38) of said hanger*

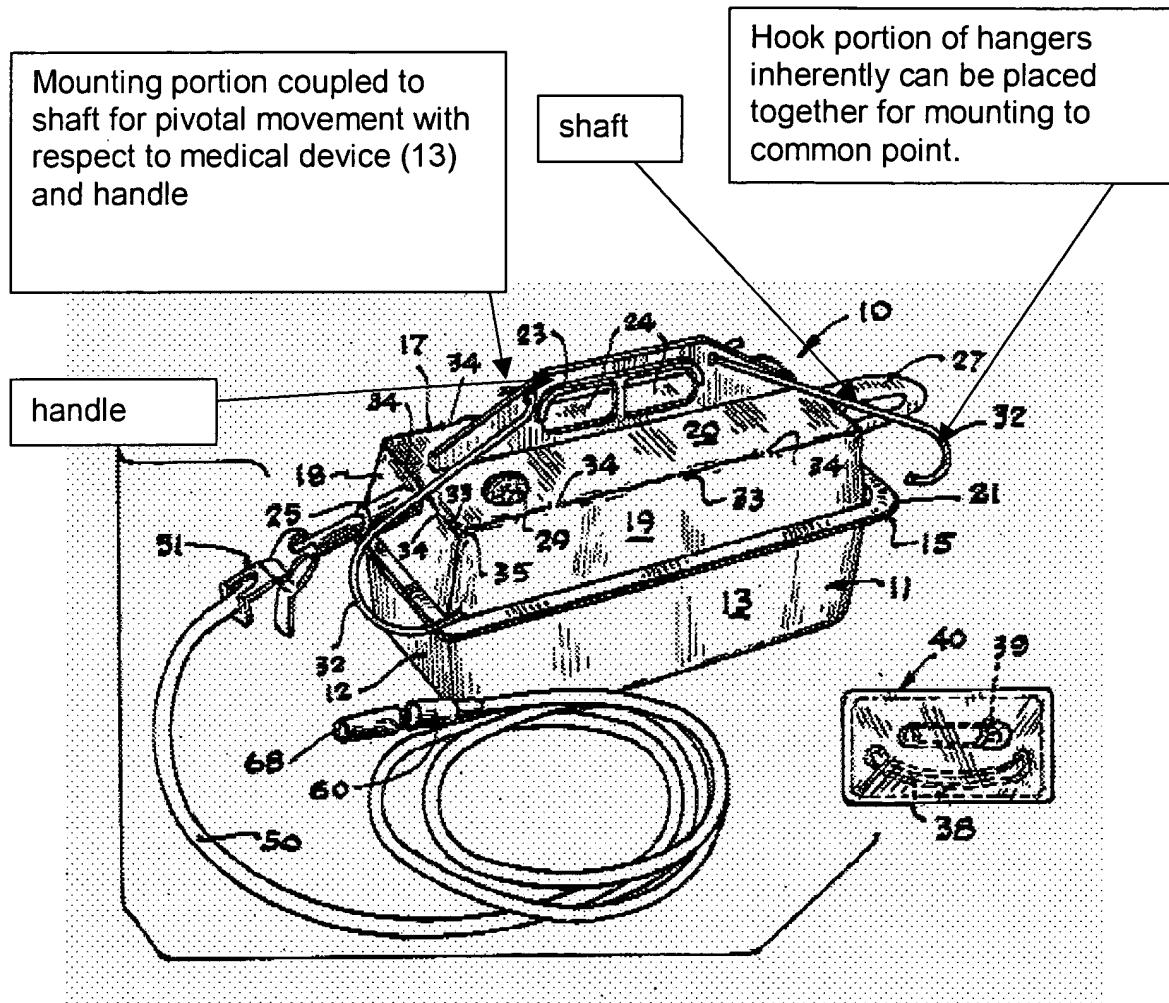
*configured to permit rotation of said hook portion with respect to said mounting portion of said hanger about a longitudinal axis (extending through the hinge) of the elongated shaft". Accordingly the rejection stands.*

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chittenden et al (US patent no. 3,690,315) in view of Koresko (US patent no. 5,224,607). Chittenden et al disclosed all the claimed features of applicant's invention (as illustrated below) except for the hook portion rotate with respect to mounting portion. Koresko teaches in a hanger of providing a hook portion (3) and mounting portion (5) wherein the hook portion rotates relative to the mounting portion to overcome prior art deficiencies by allowing for "capture of multi-positioned supports" (col. 4, lines 14-20) . It would have been obvious to one of ordinary skill in the art to have made Chittenden's hook portion rotatable relative to the mounting portion to permit capture of multi-positioned supports as taught to be desirable by Koresko.



Claims 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 32 is allowed.

Applicant's arguments filed 1/5/2006 have been fully considered but are found not persuasive as discussed in italics above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 571-272-6816. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Korie H. Chan  
Primary Examiner  
Art Unit 3632

khc  
March 14, 2006